

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MITCHELL KEITH GOODRUM

Plaintiff,

v.

STATE OF NEVADA, et. al.,

Defendants.

Case No. 3:22-CV-00221-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

On May 12, 2022, Plaintiff Mitchell Keith Goodrum ("Goodrum"), an inmate in the custody of the Nevada Department of Corrections ("NDOC") submitted a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1). However, Goodrum neither paid the full filing fee nor submitted an application to proceed *in forma pauperis*. Therefore, on August 31, 2022, the Court ordered Goodrum to do so on or before September 30, 2022 (ECF No. 3). To date, Goodrum has failed to do so.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A Court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
2 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
3 failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the Court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
16 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
17 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
18 of dismissal discussed herein. Finally, a Court's warning to a party that his failure to obey
19 the Court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
21 at 1424. The Court's order expressly stated: "If Goodrum is unable to file a fully complete
22 application to proceed in forma pauperis with all three required documents or pay the full
23 \$402 filing fee on or before September 30, 2022, this case will be subject to dismissal
24 without prejudice for Goodrum to file a new case with the Court when Goodrum is either
25 able to acquire all three of the documents needed to file a fully complete application to
26 proceed *in forma pauperis* or pays the full \$402 filing fee." (ECF No. 3.) Thus, Goodrum
27 had adequate warning that dismissal would result from his noncompliance with the
28 Court's order.

1 Accordingly, it is recommended that this action be dismissed without prejudice
2 based on Goodrum's failure to pay the filing fee or file a fully complete application to
3 proceed *in forma pauperis* in compliance with this Court's August 31, 2022 order (ECF
4 No. 3).

5 The parties are advised:

6 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
7 Practice, the parties may file specific written objections to this Report and
8 Recommendation within fourteen days of receipt. These objections should be entitled
9 "Objections to Magistrate Judge's Report and Recommendation" and should be
10 accompanied by points and authorities for consideration by the District Court.

11 2. This Report and Recommendation is not an appealable order and any
12 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
13 District Court's judgment.

14 **I. RECOMMENDATION**

15 For the reasons stated above, **IT IS RECOMMENDED** that this action be
16 **DISMISSED** without prejudice; and,

17 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**
18 accordingly.

19 **DATED:** October 7, 2022.

20 
21 **UNITED STATES MAGISTRATE JUDGE**